

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

UNITED STATES OF AMERICA,

Plaintiff,

VS.

ADAM SOMMER,

Defendant.

CASE NO. 8:04CR206

TENTATIVE FINDINGS

The Court has received the Presentence Investigation Report (“PSR”) and the Defendant’s objections thereto (Filing No. 357). See Order on Sentencing Schedule, ¶ 6. The Court advises the parties that these Tentative Findings are issued with the understanding that, pursuant to *United States v. Booker*, 2005 WL 50108 (U.S. Jan. 12, 2005), the sentencing guidelines are advisory.

The Defendant objects to the 2-level enhancement pursuant to U.S.S.G. § 2D1.1(b)(1) in ¶ 18 and the 4-level enhancement pursuant to U.S.S.G. § 3B1.1(a) in ¶ 20 because those enhancements are precluded by ¶ 1a of the plea agreement. Those objections are granted.

The Defendant also objects to issues relating to the Defendant's criminal history, specifically to ¶¶ 26, 35, 36, 37, 41 and 43. These objections are denied as moot in light of the plea agreement pursuant to Federal Rule of Criminal Procedure 11(c)(1)(C) requiring a sentence of 324 months concurrent to the Defendant's state case.

IT IS ORDERED:

1. The Defendant's Objections to the Presentence Investigation Report (Filing No. 357) are granted in part and denied in part as discussed above;

2. Otherwise the Court's tentative findings are that the Presentence Investigation Report is correct in all respects;

3. If **any** party wishes to challenge these tentative findings, the party shall immediately file in the court file and serve upon opposing counsel and the Court a motion challenging these tentative findings, supported by (a) such evidentiary materials as are required (giving due regard to the requirements of the local rules of practice respecting the submission of evidentiary materials), (b) a brief as to the law, and (c) if an evidentiary hearing is requested, a statement describing why an evidentiary hearing is necessary and an estimated length of time for the hearing;

4. Absent submission of the information required by paragraph 3 of this Order, my tentative findings may become final; and

5. Unless otherwise ordered, any motion challenging these tentative findings shall be resolved at sentencing.

DATED this 6th day of September, 2005.

BY THE COURT:

s/Laurie Smith Camp
United States District Judge